

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:15-cv-00575-MOC

MALCOLM XAVIER SPRINGS,)
Petitioner,)
Vs.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

THIS MATTER is before the court on initial review of the petitioner's Motion to Vacate, Set Aside, or Correct Sentence (#1). Initial review of the petition reveals that it has not been filed within one year of the Judgment (#29) (filed March 11, 2013) becoming final, that petitioner did not complete Section 18 "Timeliness of Motion" of the AO Form 243 petition, and that he failed to sign the petition under penalty of perjury. As to timeliness, the court will leave it to the government whether to assert and argue such affirmative defense.

As to the failure to sign the petition under penalty of perjury, it appears that petitioner instead signed the petition in the space left for signature by counsel. Petitioner will be granted leave to amend to fix this problem within 14 days of receipt of this Order.

Petitioner has also filed a Motion for Leave to Amend (docketed as Exhibit 1-1). In that motion, petitioner states that he discovered errors in his petition and would like leave to fix those errors. Apparently, petitioner included the motion to amend the petition in the same envelope with his petition, which informs this court that rather than correct the petition before filing, petitioner allowed a flawed petition to be filed with this court. In any event, petitioner will be allowed 14

days within which to file his corrected petition, keeping in mind that he must sign it not in the part provided for counsel, but in the part that provides "signature of movant."

Moving to review of potential claims, petitioner has arguably asserted the following claims:

- I. Ineffective Assistance of Counsel; and
- II. Prosecutorial Misconduct.

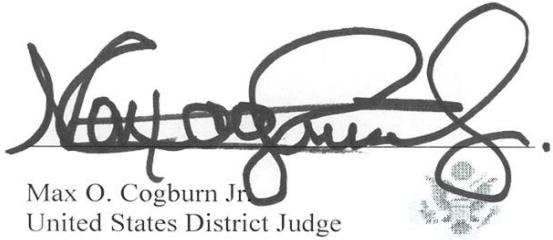
ORDER

IT IS, THEREFORE, ORDERED that

(1) within 60 Days the government file its Answer or other Response to the petition, as it may be subsequently amended;

(2) petitioner's Motion to Amend (#1-1) is **ALLOWED**, and petitioner is allowed 14 days from receipt of this Order to file with this court an Amended Petition that is signed under penalty of perjury, which completes Section 18 explaining why the petition was filed beyond one year of the Judgment becoming final, and which contains the corrections and amendments he proposed in his motion.

Signed: December 7, 2015



Max O. Cogburn Jr.
United States District Judge